



21

PTO/SB/61 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

833970.0002

First Named Inventor: Michael Strobel, et al.

Art Unit: 1614

Application Number: 09/801,908

Examiner: Raymond J. Henley

Filed: March 9, 2001

Title: Ketoprofen Powder for Oral Use

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FEB 23 2004

OFFICE OF PETITIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☒ Small entity - fee \$55.00 (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.

☐ Other than small entity - fee \$ (37 CFR 1.17(l)).

Adjustment date: 02/20/2004 SSAN: 00000024 502787 09801908
01 FC:2452

2. Reply and/or fee

55.00 DA The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply):

☐ has been filed previously on _____

☒ is enclosed herewith.

B. The issue fee of \$ _____

☐ has been filed previously on _____

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

02/20/2004 SSAN:00000024 502787 09801908

01 FC:2452 55.00 DA

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Feb. 19, 2004
Date

John W. Ryan
Signature

(202) 261-3375
Telephone Number

John W. Ryan
Typed or printed name

33,771
Registration Number, if applicable

Docket LLP
Address
1775 I Street, NW
Washington, DC 20006
Address

- Enclosure ☒ Fee Payment
☒ Reply
☐ Terminal Disclaimer Form
☒ Additional sheets containing statements establishing unavoidable delay
☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

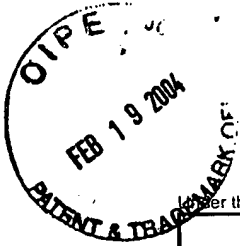
I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

Date

Signature

Typed or printed name of person signing certificate



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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

Feb. 19, 2004
Date

John W. Ryan
Signature

33,771
Registration Number, if applicable

John W. Ryan
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

(Please attach additional sheets if additional space is needed.)

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PATENT

FEB 23 2004

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Michael Strobel et al.

Serial No.: 09/801,908

Art Unit: 1614

Filed: March 9, 2001

Examiner: Raymond J. Henley

For: KETOPROFEN POWDER
FOR ORAL USE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT REGARDING RENEWED PETITION FOR REVIVAL OF
PATENT ABANDONED UNAVOIDABLY**

Sir:

I, John W. Ryan hereby declare and state as follows:

1. I am attorney of record in the above captioned U.S. patent application.
2. On information and belief, based on a November 18, 2003 telephone discussion with Primary Examiner Raymond J. Henley III in which we discussed the status of the above captioned application, an action in the above captioned application was mailed on May 16, 2003. This action apparently indicated that the response filed on May 5, 2003 in the above captioned application was held non-responsive and gave a one month period for response. We have never received a copy of this action to date.

3. Neither I, nor my prior law firm of Wilmer, Cutler & Pickering (where I was the sole patent partner), have any record of receiving the action of May 16, 2003. I have personally reviewed the file jacket in our Dechert office and there is no record of receipt of the action of May 16, 2003. A copy of the list of actions taken in the above captioned application is attached as Exhibit A.

4. I have personally reviewed the docket report for June 16, 2003, the due date for responding to the action of May 16, and there is no entry regarding the above captioned application. A copy of the docket report is attached as Exhibit B.

5. Wilmer, Cutler and Pickering closed down their patent prosecution practice in March/April 2003 on or about the time of my departure as the sole patent partner in the firm. All correspondence received at Wilmer Cutler & Pickering related to patent applications that I am prosecuting was and is forwarded to my current firm, Dechert LLP (pending the official recordation of changes of address filed with the USPTO in each application).

6. A patent docket record has not been maintained at Wilmer, Cutler & Pickering since March/April 2003. Nevertheless, as a matter of policy, all correspondence from the USPTO was recorded by Angela Akpapunam in their Records Department under the direction of Wilmer's ethics partner, Carolyn Cox, Esq., and a copy of her statement is attached as Exhibit C evidencing that they never received a copy of the May 16 action.

7. On November 20, 2003 a Notice of Abandonment was issued in the above captioned application. A copy of the Notice of Abandonment is attached as Exhibit D.

8. Neither Applicant nor any of my law firms received any office action mailed on or about May 16, 2003 for the above-identified application. Without the knowledge that a subsequent action had been issued in the above captioned application it was impossible to appropriately respond to said action. Thus, the abandonment of U.S. Patent Application 09/801,908 was unavoidable.

9. In the alternative, if this petition under 37 CFR 1.137(a) is not granted I hereby request that this petition be considered under 37 CFR 1.137(b) as a Petition For Revival of an Application Abandoned Unintentionally, as the entire delay in filing the required reply from the due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. In the event that this petition is considered under 37 CFR 1.137(b), the Director is hereby authorized to charge deposit account 50-2787 the small entity fee of \$665.00.

10. I further declare that all statements made herein are of my own knowledge, are true and that statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 100

of Title 18 of the United States Code, and that such false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

DECHERT LLP

Date: Feb. 19, 2004

John W. Ryan

John W. Ryan
Reg. No. 33,771

Dechert LLP
1775 Eye Street, N.W.
Washington, D.C. 20006
Telephone (202) 261-3375
Fax (202) 261-3333

Country Application

Tuesday, February 17, 2004

Page: 1

Case Number: 833970.002

Client: Veterinary Solutions

Case Type: ORD

Application Number: 09/801,908

Publication Number: 2002-0169212-A1

Patent Number:

Parent/PCT Number:

Parent Issue Number:

Tax Schedule: SE

Confirmation #:

Agent:

Country: US

SubCase:

United States of America

Application Status: Published

Filing Date: 09-Mar-2001

Publication Date: 14-Nov-2002

Issue Date:

Parent/PCT Date :

Parent Issue Date :

Expiration Date:

Patent Term Adjustment: 0

Agent Reference #:

Family Reference:

List Of Actions

Action(s) Due	Due Date	Action Taken	
Information Disclosure Stmt	09-Jun-2001	Due Date	
Foreign Filing Reminder	09-Sep-2001	Reminder	
Foreign Filing Due	09-Mar-2002	Final	
Application Status Check	09-Sep-2002	Due Date	
OA Response (2 Months)	06-Dec-2002	Reminder	05-May-2003
1 Month to Due Date	06-Jan-2003	Reminder	05-May-2003
OA Response (1Month)	06-Jan-2003	Reminder	05-May-2003
3 Month Due Date	06-Feb-2003	Due Date	05-May-2003
OA Response Due Date	06-Feb-2003	Due Date	05-May-2003
1st Extension	06-Mar-2003	Reminder	05-May-2003
OA Response 1st Extension	06-Mar-2003	Reminder	05-May-2003
2nd Extension	06-Apr-2003	Reminder	05-May-2003
OA Response 2nd Extension	06-Apr-2003	Reminder	05-May-2003
2 Weeks to Final Date	21-Apr-2003	Due Date	05-May-2003
OA Response Final Date (2 Wk)	21-Apr-2003	Due Date	05-May-2003
6 Month Final	06-May-2003	Final	05-May-2003
OA Response 6 Month Final	06-May-2003	Final	05-May-2003
Status Inquiry filed	31-Jul-2003	Due Date	31-Jul-2003
Further OA/Notice of Allowance	05-Nov-2003	Due Date	
Status Inquiry Follow Up Date	31-Jan-2004	Due Date	07-Jan-2004

User ID: sboyer**Date Created:** 03-Sep-2003**Last Update:** 10-Nov-2003

Page: 1

Due Date Indicator	Action Due Action Type	Case Number/SubCase Country	Status Client	App Number Pat Number	App Date Iss Date	Attys
15-Jun-2003	OA Fnl Target Date US-Final Office Action	217761.0008 United States of America	Abandoned Den-Mat Corporation	09/906,826	18-Jul-2001	JWR
<i>Title:</i> Method and System for Tooth Whitening for Long Term Efficacy						
16-Jun-2003	Examination Report from PCT	317743-120 Patent Cooperation Treaty	Pending Allelix Neuroscience Inc.	CA02/00176	15-Feb-2002	AEJ
<i>Title:</i> GlyT-1 Inhibitors						
16-Jun-2003	Request Examination	GSP47993 Brazil	Pending Teleflex CT Devices	PI 0011771-4	16-Jun-2000	JWR
Due Date	<i>Title:</i> Rolling Seal Suction Pressure Regulator, Apparatus and System for Draining a Body Cavity and Methods Related Thereto					

-----Original Message-----

From: Cox, Carolyn [mailto:Carolyn.Cox@wilmer.com]

Sent: Thursday, February 19, 2004 8:05 AM

To: Ryan, John

Cc: Akpapunam, Angela

Subject: RE: Liability Issues

John: We have no record of ever having received either communication. Angela maintains a copy of everything we have received, as well as information as to forwarding to the client or its new counsel. These records have been checked. Please let me know if you need anything further.

-----Original Message-----

From: Ryan, John [mailto:john.ryan@dechert.com]

Sent: Tuesday, February 17, 2004 5:41 PM

To: Cox, Carolyn

Cc: Akpapunam, Angela

Subject: RE: Liability Issues

Carolyn,

I left a voice message for Angela on this same matter, U.S. Serial No. 09/801,908 (Wilmer Docket No. 833970.0002) which is now abandoned for failing to respond to the office action mailed from the USPTO on or about May 16, 2003 to Wilmer, Cutler & Pickering. Would you please be so kind as to check your records and confirm that no documents for this case were in fact received from the USPTO. In addition, it would be helpful to have you or Angela summarize in a paragraph or so that all USPTO correspondence is handled by one of you and recorded upon receipt or something of that nature in order that we can provide evidence to the patent office that we have no record of receipt.

While we are at it, even though not yet asked, for another matter, U.S. Serial No. 10/176,535 (Wilmer Docket No. 621700.0008) which also is now abandoned for failing to pay the issue fee for an allowed case, the notice of allowance was mailed by the USPTO to Wilmer, Cutler & Pickering on July 28, 2003. Again, if you could provide us with a separate email attesting to the same facts that you or Angela have no record of receiving this matter (if that is in fact the case) and provide a paragraph summary of how the USPTO correspondence is channeled through one of you like above.

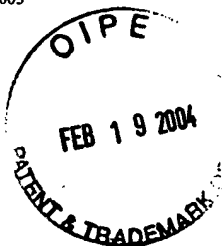


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

7590 11/20/2003
JOHN W. RYAN
DECHERT LLP
1775 I STREET, N.W.
SUITE 1100
WASHINGTON, DC 20006



EXAMINER

HENLEY III, RAYMOND J

ART UNIT PAPER NUMBER

1614

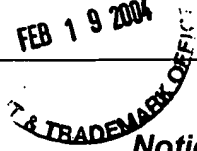
DATE MAILED: 11/20/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
DEC 01 2003
DECHERT LLP

FE B 1 9 2004



Notice of Abandonment

Application No.

09/801,908

Examiner

Raymond J. Henley III

Applicant(s)

STROBLE ET AL.

Art Unit


1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

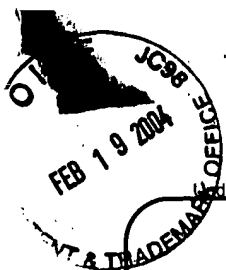
This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 May 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

* Note Attached Interview Summary (1 page)


Raymond J. Henley III
Primary Examiner
Art Unit: 1614

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



DAC

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/801,908
Filing Date	3/9/01
First Named Inventor	Michael Strobel
Art Unit	1614
Examiner Name	R. Henley
Attorney Docket Number	833970.0002

ENCLOSURES (Check all that apply)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form
<input type="checkbox"/> Fee Attached
<input checked="" type="checkbox"/> Amendment/Reply
<input type="checkbox"/> After Final
<input checked="" type="checkbox"/> Affidavits/declaration(s)
<input type="checkbox"/> Extension of Time Request
<input type="checkbox"/> Express Abandonment Request
<input type="checkbox"/> Information Disclosure Statement
<input type="checkbox"/> Certified Copy of Priority Document(s)
<input type="checkbox"/> Response to Missing Parts/Incomplete Application
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)
<input type="checkbox"/> Licensing-related Papers
<input checked="" type="checkbox"/> Petition
<input type="checkbox"/> Petition to Convert to a Provisional Application
<input type="checkbox"/> Power of Attorney, Revocation
<input type="checkbox"/> Change of Correspondence Address
<input type="checkbox"/> Terminal Disclaimer
<input type="checkbox"/> Request for Refund
<input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Status Letter
<input type="checkbox"/> Other Enclosure(s) (please identify below): |
|--|---|--|
- Remarks: Petition to revive under 37 CFR 1.137(a)

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FEB 23 2004

OFFICE OF PETITIONS

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	John W. Ryan, Reg. 33,771
Signature	<i>John W. Ryan</i>
Date	<i>Feb. 19, 2004</i>

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name

Signature

Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.